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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/089,871	06/04/1998	RUDOLF CAROLUS MARIA BARENDESE	97253-A	3289
20306	7590	08/27/2002		
MCDONNELL BOEHNEN HULBERT & BERGHOFF 300 SOUTH WACKER DRIVE SUITE 3200 CHICAGO, IL 60606			EXAMINER	
			RAMIREZ, DELIA M	
			ART UNIT	PAPER NUMBER
			1652	
			DATE MAILED: 08/27/2002	26

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Advisory Action</b>	<b>Application N .</b>	<b>Applicant(s)</b>
	09/089,871	BARENDE ET AL.
	<b>Examiner</b>	<b>Art Unit</b>
	Delia M. Ramirez	1652

*--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --*

THE REPLY FILED 12 August 2002 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

**PERIOD FOR REPLY [check either a) or b)]**

- a)  The period for reply expires \_\_\_\_\_ months from the mailing date of the final rejection.
- b)  The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.  
ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1.  A Notice of Appeal was filed on \_\_\_\_\_. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.
2.  The proposed amendment(s) will not be entered because:
  - (a)  they raise new issues that would require further consideration and/or search (see NOTE below);
  - (b)  they raise the issue of new matter (see Note below);
  - (c)  they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
  - (d)  they present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: see attached.

3.  Applicant's reply has overcome the following rejection(s): \_\_\_\_\_.
4.  Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
5.  The a) affidavit, b) exhibit, or c) request for reconsideration has been considered but does NOT place the application in condition for allowance because: see attached.
6.  The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.
7.  For purposes of Appeal, the proposed amendment(s) a) will not be entered or b) will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: none.

Claim(s) objected to: 40.

Claim(s) rejected: 18-28, 31-35, 39-40.

Claim(s) withdrawn from consideration: none.

8.  The proposed drawing correction filed on \_\_\_\_\_ is a) approved or b) disapproved by the Examiner.

9.  Note the attached Information Disclosure Statement(s) ( PTO-1449) Paper No(s). \_\_\_\_\_.

10.  Other: \_\_\_\_\_

## **ADVISORY ACTION**

1. Claims 18-28, 31-35, 39-40 are pending.
2. The period for reply continues to run from the date of the final rejection. Any extension of time must be obtained by filing a petition under 37 CFR 1.136(a) accompanied by the appropriate fee. The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. A reply within the meaning of 37 CFR 1.113 must be timely filed to avoid abandonment of this application.
3. The request for entering amendments to claims 18, 19, 40 and arguments filed on 8/12/2002 under 37 CFR 1.116 in reply to the Final Action Paper No. 24 mailed on 6/3/2002 are acknowledged.
4. Applicants argue that the claims as amended overcome the 103 rejections previously applied for the following reasons. Applicants assert that Jacobsen et al. does not teach a carrier which is non-fibrous in nature, therefore the combined teachings of Nielsen et al. and Jacobsen et al. would not result in a granulate comprising an edible carbohydrate polymer wherein the carrier is non-fibrous. Similarly, the combined teachings of Nielsen et al., Jacobsen et al. and Markussen et al. would not result in the invention of the instant application since Jacobsen et al. does not teach a non-fibrous carrier. In regard to the 103 rejection over Nielsen et al. in view of Rokey et al., Applicants assert that Rokey et al. teaches an extrusion process for the production of animal feeds wherein the starch in the feed is “cooked”, therefore, if one combines the teachings of Nielsen et al. and Rokey et al., one would obtain granules with inactive phytase

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since the starch is "cooked". Based on these arguments, Applicants conclude that the rejections should be withdrawn.

5. Applicant's arguments have been fully considered, however, the proposed amendments to claims 18-19 and 40 will not be entered since they raise new issues which will require further consideration and search. In particular, amendments to claims 18 and 19 raise new 35 USC 112 second paragraph issues. In addition, new limitations in the claims would require additional search. The rejections previously applied are, therefore, maintained for the reasons of record in view of the non-entry of the proposed amendments.

6. For purposes of Appeal, the status of the claims is as follows:

Claim(s) allowed: NONE

Claims(s) objected to: 40

Claim(s) rejected: 18-28, 31-35, 39-40

Claim(s) withdrawn from consideration: NONE

7. Applicants are requested to submit a clean copy of the pending claims (including amendments, if any) in future written communications to aid in the examination of this application.

8. Certain papers related to this application may be submitted to Art Unit 1652 by facsimile transmission. The FAX number is (703) 308-4556. The faxing of such papers must conform with the notices published in the Official Gazette, 1156 OG 61 (November 16, 1993) and 1157 OG 94 (December 28, 1993) (see 37 CFR 1.6(d)). NOTE: If Applicant submits a paper by FAX, the original copy should be retained by Applicant or Applicant's representative. NO DUPLICATE

COPIES SHOULD BE SUBMITTED, so as to avoid the processing of duplicate papers in the Office.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Delia M. Ramirez whose telephone number is (703) 306-0288. The examiner can normally be reached on Monday-Friday from 8:30 AM to 5:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Dr. Ponnathapura Achutamurthy can be reached on (703) 308-3804. Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0196.

Delia M. Ramirez, Ph.D.  
Patent Examiner  
Art Unit 1652

DR  
August 23, 2002

*Rebecca Prouty*  
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